



**IN THE 4TH JUDICIAL CIRCUIT COURT, HOLT COUNTY, MISSOURI**

Judge or Division: <b>ROGER M PROKES</b>	Case Number: <b>11HO-CC00018</b>
Plaintiff/Petitioner: <b>SHANNON B SCHIMIDT</b>	Plaintiff's/Petitioner's Attorney/Address <b>KATHRYN ANNA SPENCER 6000 N OAK TRAFFICWAY STE 20 KANSAS CITY, MO 64118</b>
Defendant/Respondent: <b>EDUARDO W FERNANDEZ MD</b>	vs. Court Address: <b>102 WEST NODAWAY PO BOX 318 OREGON, MO 64473</b>
Nature of Suit: <b>CC Pers Injury-Malpractice</b>	

(Date File Stamp)

**Summons in Civil Case**

The State of Missouri to: **EDUARDO W FERNANDEZ MD**  
Alias:  
**1303 STATE ST  
MOUND CITY, MO 64470**



You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

March 21, 2011

Date

Debra I. Cook

Clerk

Further Information:

**Sheriff's or Server's Return**

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.  
I certify that I have served the above summons by: (check one)

- delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.  
 leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.  
 (for service on a corporation) delivering a copy of the summons and a copy of the petition to

other \_\_\_\_\_ (name) \_\_\_\_\_ (title).

Served at \_\_\_\_\_  
in \_\_\_\_\_ (address)

in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

(Seal)

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires: \_\_\_\_\_

Date

Notary Public

**Sheriff's Fees**

Summons \$ \_\_\_\_\_

Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary \$ \_\_\_\_\_

Supplemental Surcharge \$ \_\_\_\_\_

Mileage \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

\$ 10.00

\$ \_\_\_\_\_ ( \_\_\_\_\_ miles @ \$ . \_\_\_\_\_ per mile)

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

**EXHIBIT A**

IN THE CIRCUIT COURT OF HOLT COUNTY, MISSOURI

SHANNON SCHMIDT  
512 EAST 5<sup>th</sup> STREET  
MOUND CITY, MO 64470

Plaintiff,

v.

EDUARDO W. FERNANDEZ, M.D.  
1303 STATE STREET  
MOUND CITY, MO 64470

NORTHWEST HEALTH SERVICES, INC.  
1303 STATE STREET  
MOUND CITY, MO 64470

Serve Registered Agent:  
Benjamin D. Ernst  
2303 Village Drive  
St. Joseph, MO 64506

Defendants.

Case No. 11 Ho - CCOCCO18

Division I

STATUS REVIEW HEARING

SET FOR Aug 3, 2011  
AT 9:30 A.M.

PETITION FOR DAMAGES

COMES NOW Plaintiff, Shannon Schmidt, by and through his undersigned attorneys, and for his claims and causes of action against the defendants, Eduardo W. Fernandez, M.D., and Northwest Health Services, Inc., Plaintiff states and alleges as follows:

ALLEGATIONS COMMON TO ALL COUNTS

PLAINTIFF

1. Plaintiff Shannon Schmidt is an individual citizen and resident of Holt County, Missouri, residing at 512 East 5<sup>th</sup> Street, Mound City, Missouri, 64470.

DEFENDANTS

2. Defendant Eduardo W. Fernandez, M.D. (hereinafter sometimes referred to as

"Defendant Fernandez") is, and was at all relevant times hereinafter mentioned, a licensed physician, engaging in the practice of medicine, with offices located at 1303 State Street, Mound City, Holt County, Missouri, 64470, and was charged with the responsibility for providing care and treatment to Plaintiff Shannon Schmidt, as hereinafter described, and said Defendant did, in fact, provide such treatment to Plaintiff Shannon Schmidt, as hereinafter described.

3. That Defendant Northwest Health Services, Inc. (sometimes referred to as "Defendant Medical Clinic") is located at 1303 State Street, Holt County, Mound City, Missouri, 64470, and is a Missouri corporation duly authorized and existing according to law; that based on information and belief, Defendant Medical Clinic, at all relevant times herein mentioned, regularly employed Defendant Fernandez; that Defendant Fernandez was, at all times herein mentioned, an agent, servant, and/or employee of Defendant Medical Clinic, and was acting within the course and scope of his employment with Defendant Medical Clinic, thereby rendering Defendant Medical Clinic liable for the acts of negligence of Defendant Fernandez upon the theory of agency, apparent/ostensible agency, and/or *respondeat superior*.

#### JURISDICTION AND VENUE

4. That the acts hereinafter mentioned giving rise to these causes of action all took place in Holt County, Missouri; that the acts alleged herein against the defendants are torts; that the amount of damages claimed by Plaintiff is in excess of \$25,000.00; therefore, this Court has jurisdiction over this cause of action pursuant to §506.500 RSMo.

5. That venue is proper in this Court pursuant to §508.010 RSMo. and/or §538.232 RSMo.

#### JOINT ACTIONS

6. That the defendants, and each of them, at the times herein mentioned, acted in concert

with one another to accomplish a common goal regarding the surgery and care and treatment rendered to Plaintiff Shannon Schmidt, thereby rendering the defendants responsible for the negligent acts of one another.

#### FACTS OF THE OCCURRENCE

7. That a physician-patient relationship commenced between Plaintiff Shannon Schmidt and Defendant Fernandez and Defendant Medical Clinic on or about March 28, 2009.
8. That on or about March 30, 2009, Defendant Fernandez examined and diagnosed Plaintiff with a left closed fracture of the distal fibula.
9. That on or about March 30, 2009, Defendant Fernandez placed Plaintiff in a short leg cast.
10. Plaintiff continued to receive treatment Dr. Fernandez for his left ankle injury until on or about July 21, 2009.
11. That on or about August 24, 2009, Plaintiff presented to Bryan D. Bredthauer, M.D. and was diagnosed with malunion of his left lateral malleolus.
12. That on or about August 28, 2009, Plaintiff underwent a re-braking and pinning procedure of his left ankle.

#### COUNT I

##### NEGLIGENCE AGAINST DEFENDANT EDUARDO W. FERNANDEZ, M.D.

COMES NOW Plaintiff Shannon Schmidt, and for his claims and causes of action against Defendant Fernandez on Count I of his Petition for Damages, states and alleges as follows:

13. Plaintiff incorporates by reference paragraphs 1 through 12, inclusively, of this Petition for Damages, the same as if fully set forth at length in this Count I.
14. That the various and sundry treatment, advice and counsel rendered by Defendant

Fernandez to Plaintiff, Shannon Schmidt, as aforementioned, was careless and negligent and not to the applicable medical standard of care to which Plaintiff was entitled in any of the following respects, or all of the following respects, to-wit:

- a. In failing to properly treat Plaintiff's left closed fracture of the distal fibula;
- b. In failing to recommend that Plaintiff's left distal fibula fracture be treated surgically on or about March 30, 2009;
- c. In failing to refer Plaintiff to an orthopedic surgeon on or about March 30, 2009;
- d. In failing to exercise that degree of skill and learning normally exercised by members of Defendant Fernandez's profession in the care and treatment of Plaintiff's left leg injury;
- e. In various and sundry other respects that are presently unknown to Plaintiff, but that Plaintiff verily believes will be revealed during the discovery process.

#### PLAINTIFF'S INJURIES AND DAMAGES

15. That as a direct and proximate result of the carelessness and negligence of Defendant Fernandez, as aforementioned, Plaintiff received the following severe, permanent, and progressive injuries, to-wit:

- a. Plaintiff required surgery to re-break and surgically correct the malunion of his ankle.
- b. Plaintiff has in the past and will in the future be forced to undergo additional surgical procedures as a result of defendants negligence.
- c. That Plaintiff has in the past and will in the future continue to suffer great

- physical pain and mental anguish;
- d. That Plaintiff has in the past and will in the future continue to suffer lost wages and income;
  - e. That Plaintiff has in the past and will in the future experience loss of life's enjoyments;
  - f. That Plaintiff has in the past and will in the future continue to incur substantial physician, hospital, medical, surgical, rehabilitative and prescriptive expenses as a result of his injuries, the exact amount of which is not known to Plaintiff at the present time;
  - g. As a result of the foregoing injuries, all of which are a direct and proximate result of the negligence of Defendant Fernandez, as aforementioned, Plaintiff has been damaged in a sum that exceeds \$25,000.00.

WHEREFORE, Plaintiff prays for judgment against Defendant Fernandez on Count I of this Petition for Damages in an amount that is fair and reasonable as determined by either the Court and/or a Jury and those damages permitted by law; for Plaintiff's costs herein expended and incurred, and for such further and other relief as the Court deems just and proper under the premises.

**COUNT II**

**NEGLIGENCE AGAINST DEFENDANT  
NORTHWEST HEALTH SERVICES, INC.**

COMES NOW Plaintiff Shannon Schmidt, and for his claims and causes of action against Defendant Medical Clinic on Count II of his Petition for Damages, states and alleges as follows:

- 16. Plaintiff incorporates by reference paragraphs 1 through 15, inclusively, of this Petition for Damages, the same as if fully set forth at length in this Count II.
- 17. That the various and sundry care, treatment, advice, and counsel rendered by

Defendant Medical Clinic, by and through its agents, servants and/or employees, including, but not limited to, Defendant Fernandez, as aforementioned, was careless and negligent in any of the following respects, or all of the following respects, to-wit:

- a. In failing to properly treat Plaintiff's left closed fracture of the distal fibula;
- b. In failing to recommend that Plaintiff's left distal fibula fracture be treated surgically on or about March 30, 2009;
- c. In failing to refer Plaintiff to an orthopedic surgeon on or about March 30, 2009;
- d. In failing to exercise that degree of skill and learning normally exercised by members of Defendant Fernandez's profession in the care and treatment of Plaintiff's left leg injury;
- e. In various and sundry other respects that are presently unknown to Plaintiff, but that Plaintiff verily believes will be revealed during the discovery process.

#### **PLAINTIFF'S INJURIES AND DAMAGES**

18. That as a direct and proximate result of the carelessness and negligence of Defendant Medical Clinic, as aforementioned, Plaintiff Shannon Schmidt received the following severe, permanent, and progressive injuries, to-wit:

- a. Plaintiff required surgery to re-break and surgically correct the malunion of his ankle.
- b. Plaintiff has in the past and will in the future be forced to undergo additional surgical procedures as a result of defendants negligence.
- c. That Plaintiff has in the past and will in the future continue to suffer great

- physical pain and mental anguish;
- d. That Plaintiff has in the past and will in the future continue to suffer lost wages and income;
  - e. That Plaintiff has in the past and will in the future experience loss of life's enjoyments;
  - f. That Plaintiff has in the past and will in the future continue to incur substantial physician, hospital, medical, surgical, rehabilitative and prescriptive expenses as a result of his injuries, the exact amount of which is not known to Plaintiff at the present time;
  - g. As a result of the foregoing injuries, all of which are a direct and proximate result of the negligence of Defendant Fernandez, as aforementioned, Plaintiff has been damaged in a sum that exceeds \$25,000.00.

WHEREFORE, Plaintiff prays for judgment against Defendant Medical Clinic on Count II of this Petition for Damages in an amount that is fair and reasonable as determined by either the Court and/or a Jury and those damages permitted by law; for Plaintiff's costs herein expended and incurred, and for such further and other relief as the Court deems just and proper under the premises.

Respectfully Submitted,

NORTON & NORTON, P.C.

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